



**RECORD**

The record before the Appeals Board is the same as that considered by the Administrative Law Judge and consists of the transcript of preliminary hearing dated December 23, 1993, and the exhibits attached thereto.

**ISSUES**

As a result of a preliminary hearing held on December 23, 1993, Administrative Law Judge John D. Clark entered an Order dated January 10, 1994, that claimant be provided temporary total disability benefits commencing October 11, 1993, and medical treatment. The respondent and insurance carrier have requested review of that Order and contend that claimant has failed to establish that he has experienced a compensable injury.

The issues before the Appeals Board are:

- (1) Whether claimant has experienced an injury arising out of and in the course of his employment; and
- (2) Whether the Administrative Law Judge has exceeded his jurisdiction and authority in ordering temporary total disability and medical benefits.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

- (1) Claimant has experienced a compensable work related accident arising out of and in the course of his employment with the respondent for which he is entitled benefits under the Kansas Workers Compensation Act.

On or about May 22, 1993, claimant, while working for Sears Roebuck and Company installing a garage door opener, stepped from a ladder and twisted and injured his right hip. After initially seeking medical care, claimant returned to work on May 25, 1993, and continued in respondent's employ until an unknown date in September 1993 when he terminated as a result of increased symptomatology in both hips.

The physicians are in agreement that claimant has bilateral aseptic necrosis of the femoral heads which was a condition that preexisted the date of alleged accident. Claimant's testimony establishes that said condition was asymptomatic prior to his stepping from the ladder. One of claimant's physicians, board certified orthopedist George Lucas, M.D., believes that claimant's preexisting condition was aggravated by the work related incident.

The respondent and insurance carrier contend that claimant recovered from the work related incident of May 1993 and, therefore, all of claimant's current problems and symptoms arise from a subsequent incident where claimant slipped while walking to his van. Based upon claimant's testimony that he continued to have symptoms since May 1993 that worsened with his work activities and that he never recovered from the ladder incident, coupled with the medical information presented to date, the Appeals Board finds for preliminary hearing purposes that it is more probable than not that claimant has experienced a work related incident on or about May 22, 1993 for which he is entitled to workers compensation benefits.

- (2) The Administrative Law Judge has not exceeded his jurisdiction and authority in granting temporary total and medical benefits. The Administrative Law Judge is specifically

empowered at preliminary hearings to adjudicate and address the issues of the furnishing of medical treatment and the payment of temporary total disability compensation. See K.S.A. 44-534a.

**AWARD**

**WHEREFORE**, it is the finding, decision and order of this Appeals Board that the Preliminary Hearing Order of Administrative Law Judge John D. Clark, dated January 10, 1994, should be, and hereby is, affirmed in all respects.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of March, 1994.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

cc: Russell B. Cranmer, 2831 E Central, Wichita, Kansas 67206  
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John D. Clark, Administrative Law Judge  
George Gomez, Director